

108TH CONGRESS
1ST SESSION

H. R. 2345

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2003

Mr. MANZULLO (for himself, Mr. OSE, Mr. PENCE, and Mr. TERRY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Regulatory Flexibility Improvements Act of 2003”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Clarification and expansion of rules covered by the Regulatory Flexibility Act.
- Sec. 4. Requirements providing for more detailed analyses.
- Sec. 5. Repeal of procedure for waiver and delay.
- Sec. 6. Procedures for gathering comments.
- Sec. 7. Periodic review of rules.
- Sec. 8. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.
- Sec. 9. Establishment and approval of small business concern size standards by Chief Counsel for Advocacy.
- Sec. 10. Additional powers of the Chief Counsel for Advocacy.
- Sec. 11. Clerical amendments.

3 **SEC. 2. FINDINGS.**

4 The Congress finds the following:

5 (1) A vibrant and growing small business sector
 6 is critical to creating jobs in a dynamic economy.

7 (2) Regulations designed for application to
 8 large-scale entities have been applied uniformly to
 9 small businesses and other small entities even
 10 though the problems sought to be solved by such
 11 regulations are not usually caused by these small
 12 businesses and other small entities.

13 (3) Uniform Federal regulatory and reporting
 14 requirements in many instances have imposed on
 15 small entities unnecessary and disproportionately
 16 burdensome demands, including legal, accounting,
 17 and consulting costs.

18 (4) Since 1980 Federal agencies have been re-
 19 quired to recognize and take account of the dif-

1 ferences in the scale and resources of regulated enti-
2 ties but have failed to do so.

3 (5) Alternative regulatory approaches that do
4 not conflict with the stated objectives of the statutes
5 the regulations seek to implement may be available
6 and may minimize the significant economic impact
7 of regulations on small businesses and other small
8 entities.

9 (6) Federal agencies have failed to analyze and
10 uncover less costly alternative regulatory approaches,
11 despite the fact that the chapter 6 of title 5, United
12 States Code (commonly known as the Regulatory
13 Flexibility Act) requires them to do so.

14 (7) Federal agencies continue to interpret chap-
15 ter 6 of title 5, United States Code, in a manner
16 that permits them to avoid their analytical respon-
17 sibilities.

18 (8) The existing oversight of the compliance of
19 Federal agencies with the analytical requirements to
20 assess regulatory impacts on small businesses and
21 other small entities and obtain input from the Chief
22 Counsel for Advocacy has not sufficiently modified
23 the Federal agency regulatory culture.

24 (9) Significant changes are needed in the meth-
25 ods by which Federal agencies develop and analyze

1 regulations, receive input from affected entities, and
2 develop regulatory alternatives that will lessen the
3 burden or maximize the benefits of final rules to
4 small businesses and other small entities.

5 (10) It is the intention of the Congress to
6 amend chapter 6 of title 5, United States Code, to
7 ensure that all impacts, including foreseeable indi-
8 rect effects, of proposed and final rules are consid-
9 ered by agencies during the rulemaking process and
10 that the agencies assess a full range of alternatives
11 that will limit adverse economic consequences or en-
12 hance economic benefits.

13 (11) Federal agencies should be capable of as-
14 sessing the impact of proposed and final rules with-
15 out delaying the regulatory process or impinging on
16 the ability of Federal agencies to fulfill their statu-
17 tory mandates.

18 **SEC. 3. CLARIFICATION AND EXPANSION OF RULES COV-**
19 **ERED BY THE REGULATORY FLEXIBILITY**
20 **ACT.**

21 (a) IN GENERAL.—Paragraph (2) of section 601 of
22 title 5, United States Code, is amended to read as follows:

23 “(2) RULE.—The term ‘rule’ has the meaning
24 given such term in section 551(4) of this title, ex-
25 cept that—

1 “(A) such term includes any rule of gen-
 2 eral applicability governing grants to State and
 3 local governments for which the agency provides
 4 an opportunity for notice and comment; and

5 “(B) such term does not include a rule of
 6 particular (and not general) applicability relat-
 7 ing to rates, wages, corporate or financial struc-
 8 tures or reorganizations thereof, prices, facili-
 9 ties, appliances, services, or allowances therefor
 10 or to valuations, costs or accounting, or prac-
 11 tices relating to such rates, wages, structures,
 12 prices, appliances, services, or allowances.”.

13 (b) INCLUSION OF RULES WITH INDIRECT EF-
 14 FECTS.—Section 601 of title 5, United States Code, is
 15 amended by adding at the end the following new para-
 16 graph:

17 “(9) ECONOMIC IMPACT.—The term ‘economic
 18 impact’ means, with respect to a proposed or final
 19 rule—

20 “(A) any direct economic effect on small
 21 entities of such rule; and

22 “(B) any indirect economic effect on small
 23 entities which is reasonably foreseeable and re-
 24 sults from such rule (without regard to whether

1 small entities will be directly regulated by the
2 rule).”.

3 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
4 FECTS.—

5 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
6 YSIS.—Subsection (c) of section 603 of title 5,
7 United States Code, is amended by striking the first
8 sentence and inserting “Each initial regulatory flexi-
9 bility analysis shall also contain a detailed descrip-
10 tion of alternatives to the proposed rule which mini-
11 mize any significant adverse economic impact or
12 maximize any significant beneficial economic impact
13 on small entities.”.

14 (2) FINAL REGULATORY FLEXIBILITY ANAL-
15 YSIS.—Paragraph (5) of section 604(a) of title 5,
16 United States Code, is amended by striking “mini-
17 mize the significant economic impact” and inserting
18 “minimize the significant adverse economic impact
19 or maximize the significant beneficial economic im-
20 pact”.

21 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
22 NIZATIONS.—Paragraph (5) of section 601 of title 5,
23 United States Code, is amended by inserting “and tribal
24 organizations (as defined in section 4(l) of the Indian Self-

1 Determination and Education Assistance Act (25 U.S.C.
2 450b(l))),” after “special districts,”.

3 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
4 FORMAL RULEMAKING.—

5 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
6 YSIS.—Subsection (a) of section 603 of title 5,
7 United States Code, is amended in the first sen-
8 tence—

9 (A) by striking “or” after “proposed
10 rule,”; and

11 (B) by inserting “publishes a revision or
12 amendment to a land management plan, or
13 issues a proposed rule made on the record after
14 opportunity for an agency hearing,” after
15 “United States,”.

16 (2) FINAL REGULATORY FLEXIBILITY ANAL-
17 YSIS.—Subsection (a) of section 604 of title 5,
18 United States Code, is amended in the first sen-
19 tence—

20 (A) by striking “or” after “proposed rule-
21 making,”; and

22 (B) by inserting “, adopts a revision or
23 amendment to a land management plan, or
24 issues a final rule made on the record after op-

portunity for an agency hearing,” after “section 603(a),”.

(3) LAND MANAGEMENT PLAN DEFINED.—Section 601 of title 5, United States Code (as amended by subsection (b)), is further amended by adding at the end the following new paragraph:

“(10) LAND MANAGEMENT PLAN.—

“(A) IN GENERAL.—The term ‘land management plan’ means—

“(i) any plan developed by the Secretary of Agriculture under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604); and

“(ii) any plan developed by the Secretary of Interior under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

“(B) REVISION.—The term ‘revision’ means any change to a land management plan which—

“(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(5) of the Forest and Rangeland Re-

newable Resources Planning Act of 1974
(16 U.S.C. 1604(f)(5)); or

“(ii) in the case of a plan described in
subparagraph (A)(ii), is made under sec-
tion 1610.5–6 of title 43, Code of Federal
Regulations (or any successor regulation).

“(C) AMENDMENT.—The term ‘amend-
ment’ means any change to a land management
plan which—

“(i) in the case of a plan described in
subparagraph (A)(i), is made under section
6(f)(4) of the Forest and Rangeland Re-
newable Resources Planning Act of 1974
(16 U.S.C. 1604(f)(4)) and with respect to
which the Secretary of Agriculture pre-
pares a statement described in section
102(2)(C) of the National Environmental
Policy Act of 1969 (42 U.S.C.
4332(2)(C)); or

“(ii) in the case of a plan described in
subparagraph (A)(ii), is made under sec-
tion 1610.5–5 of title 43, Code of Federal
Regulations (or any successor regulation)
and with respect to which the Secretary of
the Interior prepares a statement described

1 in section 102(2)(C) of the National Envi-
2 ronmental Policy Act of 1969 (42 U.S.C.
3 4332(2)(C)).”.

4 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
5 INVOLVING THE INTERNAL REVENUE LAWS WHICH IM-
6 POSE RECORDKEEPING REQUIREMENTS, ETC.—

7 (1) IN GENERAL.—Subsection (a) of section
8 603 of title 5, United States Code, is amended by
9 striking the period at the end and inserting “or a
10 recordkeeping requirement, and without regard to
11 whether such requirement is imposed by statute or
12 regulation.”.

13 (2) COLLECTION OF INFORMATION.—Paragraph
14 (7) of section 601 of title 5, United States Code, is
15 amended to read as follows:

16 “(7) COLLECTION OF INFORMATION.—The term
17 ‘collection of information’ has the meaning given
18 such term in section 3502(3) of title 44, United
19 States Code.”.

20 (3) RECORDKEEPING REQUIREMENT.—Para-
21 graph (8) of section 601 of title 5, United States
22 Code, is amended to read as follows:

23 “(8) RECORDKEEPING REQUIREMENT.—The
24 term ‘recordkeeping requirement’ has the meaning

1 given such term in section 3502(13) of title 44,
2 United States Code.”.

3 (g) DEFINITION OF SMALL ORGANIZATION.—Para-
4 graph (4) of section 601 of title 5, United States Code,
5 is amended to read as follows:

6 “(4) SMALL ORGANIZATION.—

7 “(A) IN GENERAL.—The term ‘small orga-
8 nization’ means any not-for-profit enterprise
9 which, as of the issuance of the notice of pro-
10 posed rulemaking—

11 “(i) in the case of an enterprise which
12 is described by a classification code of the
13 North American Industrial Classification
14 System, does not exceed the size standard
15 established by the Administrator of the
16 Small Business Administration pursuant to
17 section 3 of the Small Business Act (15
18 U.S.C. 632) for small business concerns
19 described by such classification code, and

20 “(ii) in the case of any other enter-
21 prise, has a net worth that does not exceed
22 \$7,000,000 and has not more than 500
23 employees.

24 “(B) LOCAL LABOR ORGANIZATIONS.—In
25 the case of any local labor organization, sub-

paragraph (A) shall be applied without regard to any national or international organization of which such local labor organization is a part.

“(C) PROFESSIONAL AND TRADE ASSOCIATIONS.—In the case of any professional or trade association, subparagraph (A) shall be applied without regard to the net worth or number of employees of any member of such association.

“(D) AGENCY DEFINITIONS.—Subparagraphs (A), (B), and (C) shall not apply to the extent that an agency establishes, after opportunity for public comment, one or more definitions for such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”.

SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—Subsection (b) of section 603 of title 5, United States Code, is amended to read as follows:

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

1 “(1) describing the reasons why action by the
2 agency is being considered;

3 “(2) describing the objectives of, and legal basis
4 for, the proposed rule;

5 “(3) estimating the number and type of small
6 entities to which the proposed rule will apply;

7 “(4) describing the projected reporting, record-
8 keeping, and other compliance requirements of the
9 proposed rule, including an estimate of the classes of
10 small entities which will be subject to the require-
11 ment and the type of professional skills necessary
12 for preparation of the report and record;

13 “(5) describing all relevant Federal rules which
14 may duplicate, overlap, or conflict with the proposed
15 rule, or the reasons why such a description could not
16 be provided; and

17 “(6) estimating the additional cumulative eco-
18 nomic impact of the proposed rule on small entities
19 beyond that already imposed on the class of small
20 entities by the agency or why such an estimate is
21 not available.”.

22 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

23 (1) IN GENERAL.—

1 (A) Paragraph (1) of section 604(a) of
2 title 5, United States Code, is amended by
3 striking “succinct”.

4 (B) Paragraph (2) of such section is
5 amended by striking “summary” each place it
6 appears and inserting “statement”.

7 (C) Paragraph (3) of such section is
8 amended by striking “an explanation” and in-
9 serting “a detailed explanation”.

10 (D) Paragraphs (3), (4), and (5) of such
11 section are each amended by inserting “de-
12 tailed” before “description”.

13 (2) INCLUSION OF RESPONSE TO COMMENTS ON
14 CERTIFICATION OF PROPOSED RULE.—Paragraph
15 (2) of section 604(a) of title 5, United States Code,
16 is amended by inserting “(or certification of the pro-
17 posed rule under section 605(b))” after “initial reg-
18 ulatory flexibility analysis”.

19 (3) INCLUSION OF RESPONSE TO COMMENTS
20 FILED BY CHIEF COUNSEL FOR ADVOCACY.—Sub-
21 section (a) of section 604 of title 5, United States
22 Code, is amended by redesignating paragraphs (3),
23 (4), and (5) as paragraphs (4), (5), and (6), respec-
24 tively, and inserting after paragraph (2) the fol-
25 lowing new paragraph:

1 “(3) the agency’s response to any comments
2 filed by the Chief Counsel for Advocacy in response
3 to the proposed rule, and a detailed statement of
4 any changes made to the proposed rule in the final
5 rule as a result of such comments;”.

6 (4) PUBLICATION OF ANALYSIS ON WEBSITE,
7 ETC.—Subsection (b) of section 604 of title 5,
8 United States Code, is amended to read as follows:
9 “(b) The agency shall make copies of the final regu-
10 latory flexibility analysis available to the public, including
11 placement of the entire analysis on the agency’s website,
12 and shall publish in the Federal Register the final regu-
13 latory flexibility analysis, or a summary thereof which in-
14 cludes the telephone number, mailing address, and link to
15 the website where the complete analysis may be ob-
16 tained.”.

17 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
18 Subsection (a) of section 605 of title 5, United States
19 Code, is amended to read as follows:

20 “(a) A Federal agency shall be treated as satisfying
21 any requirement regarding the content of an agenda or
22 regulatory flexibility analysis under section 602, 603, or
23 604, if such agency provides in such agenda or analysis
24 a cross-reference to the specific portion of another agenda

1 or analysis which is required by any other law and which
2 satisfies such requirement.”.

3 (d) CERTIFICATIONS.—Subsection (b) of such section
4 is amended—

5 (1) by inserting “detailed” before “statement”;
6 and

7 (2) by inserting “and legal” after “factual”.

8 (e) QUANTIFICATION REQUIREMENTS.—Section 607
9 of title 5, United States Code, is amended to read as fol-
10 lows:

11 **“§ 607. Quantification requirements**

12 “In complying with sections 603 and 604, an agency
13 shall provide—

14 “(1) a quantifiable or numerical description of
15 the effects of the proposed or final rule and alter-
16 natives to the proposed or final rule; or

17 “(2) a more general descriptive statement and
18 a detailed statement explaining why quantification is
19 not practicable or reliable.”.

20 **SEC. 5. REPEAL OF PROCEDURE FOR WAIVER AND DELAY.**

21 (a) IN GENERAL.—Title 5, United States Code, is
22 amended by striking section 608.

23 (b) CONFORMING AMENDMENTS.—

1 (1) Paragraphs (1) and (2) of section 611(a) of
 2 title 5, United States Code, are each amended by
 3 striking “608(b),”.

4 (2) Paragraph (3) of such section is amended—

5 (A) by striking subparagraph (B); and

6 (B) by striking “(3)(A) A small entity”

7 and inserting the following:

8 “(3) A small entity”.

9 **SEC. 6. PROCEDURES FOR GATHERING COMMENTS.**

10 Section 609 of title 5, United States Code, is amend-
 11 ed by striking subsection (b) and all that follows and in-
 12 serting the following new subsections:

13 “(b)(1) Prior to publication of any proposed rule de-
 14 scribed in subsection (e), the agency making such rule
 15 shall notify the Chief Counsel for Advocacy and provide
 16 the Chief Counsel with—

17 “(A) all materials prepared or utilized by the
 18 agency in making the proposed rule, including the
 19 draft of the proposed rule; and

20 “(B) information on the potential adverse and
 21 beneficial economic impacts of the proposed rule on
 22 small entities and the type of small entities that
 23 might be affected.

24 “(2) An agency shall not be required under para-
 25 graph (1) to provide the exact language of any draft of

1 a proposed rule relating to the internal revenue laws of
2 the United States or implementing the Communications
3 Act of 1934.

4 “(c) Not later than 15 days after the receipt of such
5 information, the Chief Counsel for Advocacy shall—

6 “(1) identify small entities or representatives of
7 small entities or a combination of both for the pur-
8 pose of obtaining advice, input, and recommenda-
9 tions from those persons about the potential eco-
10 nomic impacts of the proposed rule and the compli-
11 ance of the agency with section 603 or section
12 605(b) of this title; and

13 “(2) convene a review panel consisting of an
14 employee from the Office of Advocacy, an employee
15 from the agency making the rule, and an employee
16 from the Office of Information and Regulatory Af-
17 fairs of the Office of Management and Budget to re-
18 view the information provided to the Chief Counsel
19 under subsection (b).

20 “(d)(1) Not later than 60 days after the review panel
21 described in subsection (c)(2) is convened, the Chief Coun-
22 sel for Advocacy shall, after consultation with the mem-
23 bers of such panel, submit a report to the agency and the
24 Office of Information and Regulatory Affairs of the Office
25 of Management and Budget.

1 “(2) Such report shall include an assessment of the
2 impact of the proposed rule on small entities and a discus-
3 sion of any alternatives that will minimize adverse eco-
4 nomic impacts or maximize beneficial economic impacts on
5 small entities.

6 “(3) Such report shall become part of the rulemaking
7 record. In the publication of the proposed rule, the agency
8 shall explain what actions, if any, the agency took in re-
9 sponse to such report.

10 “(e) A proposed rule is described by this subsection
11 if the Administrator of the Office of Information and Reg-
12 ulatory Affairs of the Office of Management and Budget,
13 the Administrator of the Environmental Protection Agen-
14 cy, the Assistant Secretary of the Occupational Safety and
15 Health Administration, the Commissioner of the Internal
16 Revenue Service, the Administrator of the Centers for
17 Medicare & Medicaid Services, or the Federal Communica-
18 tions Commission determines that the proposed rule is
19 likely to result in—

20 “(1) an annual effect on the economy of
21 \$100,000,000 or more;

22 “(2) a major increase in costs or prices for con-
23 sumers, individual industries, Federal, State, or local
24 governments, tribal organizations, or geographic re-
25 gions;

1 “(3) significant adverse effects on competition,
2 employment, investment, productivity, innovation, or
3 on the ability of United States-based enterprises to
4 compete with foreign-based enterprises in domestic
5 and export markets; or

6 “(4) a significant economic impact on a sub-
7 stantial number of small entities.

8 “(f) Upon application by the agency, the Chief Coun-
9 sel for Advocacy may waive the requirements of sub-
10 sections (b) through (e) if the Chief Counsel determines
11 that compliance with the requirements of such subsections
12 are impracticable, unnecessary, or contrary to the public
13 interest.”.

14 **SEC. 7. PERIODIC REVIEW OF RULES.**

15 Section 610 of title 5, United States Code is amended
16 to read as follows:

17 **“§ 610. Periodic review of rules**

18 “(a) Not later than 180 days after the enactment of
19 the Regulatory Flexibility Improvements Act of 2002,
20 each agency shall publish in the Federal Register and
21 place on its website a plan for the periodic review of rules
22 issued by the agency which the head of the agency deter-
23 mines has a significant economic impact on a substantial
24 number of small entities. Such determination shall be
25 made without regard to whether the agency performed an

1 analysis under section 604. The purpose of the review
2 shall be to determine whether such rules should be contin-
3 ued without change, or should be amended or rescinded,
4 consistent with the stated objectives of applicable statutes,
5 to minimize any significant adverse economic impacts or
6 maximize any significant beneficial economic impacts on
7 a substantial number of small entities. Such plan may be
8 amended by the agency at any time by publishing the revi-
9 sion in the Federal Register and subsequently placing the
10 amended plan on the agency's website.

11 “(b) The plan shall provide for the review of all such
12 agency rules existing on the date of the enactment of the
13 Regulatory Flexibility Improvements Act of 2002 within
14 10 years of the date of publication of the plan in the Fed-
15 eral Register and for review of rules adopted after the date
16 of enactment of the Regulatory Flexibility Improvements
17 Act of 2002 within 10 years after the publication of the
18 final rule in the Federal Register. If the head of the agen-
19 cy determines that completion of the review of existing
20 rules is not feasible by the established date, the head of
21 the agency shall so certify in a statement published in the
22 Federal Register and may extend the review for not longer
23 than 2 years after publication of notice of extension in
24 the Federal Register. Such certification and notice shall

1 be sent to the Chief Counsel for Advocacy and the Con-
2 gress.

3 “(c) Each agency shall annually submit a report re-
4 garding the results of its review pursuant to such plan
5 to the Congress and, in the case of agencies other than
6 independent regulatory agencies (as defined in section
7 3502(5) of title 44, United States Code) to the Adminis-
8 trator of the Office of Information and Regulatory Affairs
9 of the Office of Management and Budget. Such report
10 shall include the identification of any rule with respect to
11 which the head of the agency made a determination de-
12 scribed in paragraph (5) or (6) of subsection (d) and a
13 detailed explanation of the reasons for such determination.

14 “(d) In reviewing rules under such plan, the agency
15 shall consider the following factors:

16 “(1) The continued need for the rule.

17 “(2) The nature of complaints received by the
18 agency from small entities concerning the rule.

19 “(3) Comments by the Regulatory Enforcement
20 Ombudsman and the Chief Counsel for Advocacy.

21 “(4) The complexity of the rule.

22 “(5) The extent to which the rule overlaps, du-
23 plicates, or conflicts with other Federal rules and,
24 unless the head of the agency determines it to be in-
25 feasible, State and local rules.

1 “(6) The contribution of the rule to the cumu-
2 lative economic impact of all Federal rules on the
3 class of small entities affected by the rule, unless the
4 head of the agency determines that such calculations
5 cannot be made and reports that determination in
6 the annual report required under subsection (c).

7 “(7) The length of time since the rule has been
8 evaluated or the degree to which technology, eco-
9 nomic conditions, or other factors have changed in
10 the area affected by the rule.

11 “(e) The agency shall publish in the Federal Register
12 and on its website a list of rules to be reviewed pursuant
13 to such plan. Such publication shall include a brief de-
14 scription of the rule, the reason why the agency deter-
15 mined that it has a significant economic impact on a sub-
16 stantial number of small entities (without regard to wheth-
17 er it had prepared a final regulatory flexibility analysis
18 for the rule), and request comments from the public, the
19 Chief Counsel for Advocacy, and the Regulatory Enforce-
20 ment Ombudsman concerning the enforcement of the
21 rule.”.

1 **SEC. 8. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
2 **QUIREMENTS OF THE REGULATORY FLEXI-**
3 **BILITY ACT AVAILABLE AFTER PUBLICATION**
4 **OF THE FINAL RULE.**

5 (a) IN GENERAL.—Paragraph (1) of section 611(a)
6 of title 5, United States Code, is amended by striking
7 “final agency action” and inserting “such rule”.

8 (b) JURISDICTION.—Paragraph (2) of such section is
9 amended by inserting “(or which would have such jurisdic-
10 tion if publication of the final rule constituted final agency
11 action)” after “provision of law,”.

12 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of
13 such section (as amended by section 5(b)(2)) is amend-
14 ed—

15 (1) by striking “final agency action” and insert-
16 ing “publication of the final rule”; and

17 (2) by inserting “, in the case of a rule for
18 which the date of final agency action is the same
19 date as the publication of the final rule,” after “ex-
20 cept that”.

21 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
22 CACY.—Subsection (b) of section 612 of title 5, United
23 States Code, is amended by inserting before the first pe-
24 riod “or agency compliance with section 601, 604, 605(b),
25 609, or 610”.

1 **SEC. 9. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
2 **NESS CONCERN SIZE STANDARDS BY CHIEF**
3 **COUNSEL FOR ADVOCACY.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 3(a)(2) of the Small Business Act (15 U.S.C.
6 632(a)(2)(A)) is amended to read as follows:

7 “(A) IN GENERAL.—In addition to the cri-
8 teria specified in paragraph (1)—

9 “(i) the Administrator may specify de-
10 tailed definitions or standards by which a
11 business concern may be determined to be
12 a small business concern for purposes of
13 this Act or the Small Business Investment
14 Act of 1958; and

15 “(ii) the Chief Counsel for Advocacy
16 may specify such definitions or standards
17 for purposes of any other Act.”.

18 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
19 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
20 632(a)(2)(C)(iii)) is amended to read as follows:

21 “(iii) except in the case of a size
22 standard prescribed by the Administrator,
23 is approved by the Chief Counsel for Advo-
24 cacy.”.

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section
 2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
 3 amended—

4 (1) by inserting “and Chief Counsel for Advoca-
 5 cacy” before “shall ensure”; and

6 (2) by inserting “or Chief Counsel for Advoca-
 7 cacy” before the period at the end.

8 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-
 9 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small
 10 Business Act (15 U.S.C. 632(a)) is amended by adding
 11 at the end the following new paragraph:

12 “(4) JUDICIAL REVIEW OF STANDARDS APPROVED BY
 13 CHIEF COUNSEL.—In the case of an action for judicial re-
 14 view of a rule which includes a definition or standard ap-
 15 proved by the Chief Counsel for Advocacy under this sub-
 16 section, the party seeking such review shall be entitled to
 17 join the Chief Counsel as a party in such action.”.

18 **SEC. 10. ADDITIONAL POWERS OF THE CHIEF COUNSEL**
 19 **FOR ADVOCACY.**

20 (a) IN GENERAL.—Chapter 6 of title 5, United
 21 States Code, is amended by adding at the end the fol-
 22 lowing new section:

1 **“§ 613. Additional powers of Chief Counsel for Advoca-**
2 **cacy**

3 “(a)(1) Not later than 270 days after the date of the
4 enactment of the Regulatory Flexibility Improvements Act
5 of 2002, the Chief Counsel for Advocacy shall, after oppor-
6 tunity for notice and comment under section 553, issue
7 rules governing agency compliance with this chapter. The
8 Chief Counsel may modify or amend such rules after no-
9 tice and comment under section 553. This chapter (other
10 than this subsection and section 614) shall not apply with
11 respect to the issuance, modification, and amendment of
12 rules under this paragraph.

13 “(2) An agency shall not issue rules which supple-
14 ment the rules issued under subsection (a) unless such
15 agency has first consulted with the Chief Counsel for Ad-
16 vocacy to ensure that such supplemental rules comply with
17 this chapter and the rules issued under paragraph (1).

18 “(b) Notwithstanding any other law, the Chief Coun-
19 sel for Advocacy may intervene in any adjudication before
20 any Federal agency (unless such agency is authorized to
21 impose a fine or penalty under such adjudication), and
22 may inform the agency of the impact that any decision
23 on the record may have on small entities. The Chief Coun-
24 sel shall not initiate an appeal with respect to any adju-
25 dication in which the Chief Counsel intervenes under this
26 subsection.

1 “(c) The Chief Counsel for Advocacy may file com-
 2 ments in response to any agency notice requesting com-
 3 ment, regardless of whether the agency is required to file
 4 a general notice of proposed rulemaking under section
 5 553.”.

6 (b) JURISDICTION OF COURT OF APPEALS OVER
 7 RULES IMPLEMENTING THE REGULATORY FLEXIBILITY
 8 ACT.—

9 (1) IN GENERAL.—Section 2342 of title 28,
 10 United States Code, is amended—

11 (A) in paragraph (6), by striking “and” at
 12 the end;

13 (B) in paragraph (7), by striking the pe-
 14 riod at the end and inserting “; and”; and

15 (C) by adding at the end the following new
 16 paragraph:

17 “(8) all final rules under section 613(a) of title
 18 5, United States Code.”.

19 (2) CONFORMING AMENDMENTS.—Paragraph
 20 (3) of section 2341 of title 28, United States Code,
 21 is amended—

22 (A) in subparagraph (D), by striking
 23 “and” at the end;

24 (B) in subparagraph (E), by striking the
 25 period at the end and inserting “; and”; and

1 (C) by adding at the end the following new
 2 subparagraph:

3 “(F) the Office of Advocacy of the Small
 4 Business Administration, when the final rule is
 5 under section 613(a) of title 5, United States
 6 Code.”.

7 (c) AUTHORIZATION TO INTERVENE AND COMMENT
 8 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
 9 DURE.—Subsection (b) of section 612 of title 5, United
 10 States Code, is amended by inserting “chapter 5, and
 11 chapter 7,” after “this chapter,”.

12 **SEC. 11. CLERICAL AMENDMENTS.**

13 (a) Section 601 of title 5, United States Code, is
 14 amended—

15 (1) in paragraph (1)—

16 (A) by striking the semicolon at the end
 17 and inserting a period; and

18 (B) by striking “(1) the term” and insert-
 19 ing the following:

20 “(1) AGENCY.—The term”;

21 (2) in paragraph (3)—

22 (A) by striking the semicolon at the end
 23 and inserting a period, and

24 (B) by striking “(3) the term” and insert-
 25 ing the following:

1 “(3) SMALL BUSINESS.—The term”;

2 (3) in paragraph (5)—

3 (A) by striking the semicolon at the end
4 and inserting a period, and

5 (B) by striking “(5) the term” and insert-
6 ing the following:

7 “(5) SMALL GOVERNMENTAL JURISDICTION.—
8 The term”; and

9 (4) in paragraph (6)—

10 (A) by striking “; and” and inserting a pe-
11 riod, and

12 (B) by striking “(6) the term” and insert-
13 ing the following:

14 “(6) SMALL ENTITY.—The term”.

15 (b) The heading of section 605 of title 5, United
16 States Code, is amended to read as follows:

17 **“§ 605. Incorporations by reference and certifi-**
18 **cations”.**

19 (c) The table of sections for chapter 6 of title 5,
20 United States Code, is amended—

21 (1) by striking the item relating to section 605
22 and inserting the following new item:

“605. Incorporations by reference and certifications.”;

23 (2) by striking the item relating to section 607
24 and inserting the following new item:

“607. Quantification requirements.”;

- 1 (3) by striking the item relating to section 608;
2 and
3 (4) by inserting at the end the following new
4 item:

“613. Additional powers of Chief Counsel for Advocacy.”.

